

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

CRLREV No.155 of 2026
CNR No. ODHCO10114962026

In the matter of an application under Section 442 of the
BNSS, 2023 read with Section 438 of BNSS.

Sri Ranjit Sahoo @ Ranjeet
Kumar Sahoo

....

Petitioner

-versus-

1. State of Orissa
2. ABLT Products and
Projects Private Ltd.
represented through its
managing Director, Sri
Abhisek Rout

....

Opposite Parties

For Petitioner : Mr. S. Harichandan, Advocate

For Opposite Party : Mr. C.R. Swain, AGA
Mr. A. Mishra, Adv. (O.P. No.2)

CORAM:

JUSTICE V. NARASINGH

DATE OF FINAL HEARING : 21.04.2026

DATE OF JUDGMENT : 30.07.2026

V. Narasingh, J. Heard learned counsel for the
Petitioner and learned counsel for the Opposite
Parties.

1. The present criminal revision has been filed
assailing the order dated 12.01.2026 passed in I.C.C.



Case No.7 of 2025 by the J.M.F.C., Jajpur Road, whereby the prayer of the accused-Petitioner to consider the ground of maintainability of the proceeding under Section 138¹ of the N.I. Act in terms of the direction of this Court dated 02.12.2025 in CRLMC No.5041 of 2025 was negatived.

The relevant portion of the impugned order is culled out hereunder;

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.....Now, the case/record is at the stage of recording of the accused's statement. The accused has enough opportunity to advance

¹ **138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.



his defence, if any, at the right stage. So, being guided by the provisions of the Negotiable Instruments Act and the facts and circumstances of this case, I am of the opinion that, at this stage, the petition is not maintainable...

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2. It is the submission of the learned counsel for the Petitioner that instead of considering the question of maintainability in terms of the order passed by this Court, referred to hereinabove, the Trial Court has held the petition filed as not maintainable.

3. Learned counsel for the complainant-Opposite Party No.2 submits that there is no illegality in the order passed in as much as, by the impugned order, liberty has been granted to the accused to canvass his defence during recording of his statement.

4. Brief facts germane for just adjudication runs thus;

The Opposite Party No.2, as complainant, instituted I.C.C. Case No.7 of 2025 in the Court of the J.M.F.C., Jajpur Road, Jajpur, citing the present



Petitioner as the accused under Section 138¹ of the N.I. Act read with sub-sections (2), (3) and (4) of Section 318² of the BNS for dishonour of a cheque of Rs.2,50,407/-.

5. In the complaint petition, it was the specific stand of the complainant that the demand notice in question was issued by registered post to the given address on 06.12.2024 and since no acknowledgement thereof was received and the case in question was instituted on 10.01.2025.

6. The accused-Petitioner approached this Court by filing CRLMC No.5041 of 2025 seeking quashing of

² **318. Cheating.**—(1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



the entire criminal proceeding in I.C.C Case No.7 of 2025, inter alia, on the ground that the institution of the proceeding is premature keeping in view the provisions contained, inter alia, under Section 138(b)¹ of the N.I. Act.

While disposing of the said CRLMC on 02.12.2025 after hearing counsel for both sides, this Court specifically directed the Court in seisin to consider the ground regarding the institution of the proceeding before expiry of due date as provided in the proviso to Section 138¹ of the NI Act.

Paragraphs.5 and 6 of the order passed in the said CRLMC are extracted hereunder for convenience of reference;

"5. In course of hearing, learned counsel for the Petitioner referring to the judgment of the Hon'ble Supreme Court in the case of *Yogendra Pratap Singh v. Savitri Pandey* reported in AIR 2015 SC 157 as well as a Coordinate Bench of this Court in *Prafulla Kumar Prusty @ Prafulla Chandra Prusty v. Ramesh Chandra Behera* reported in (2022) 85 OCR – 1040, submitted before this Court that even



before expiry of the due date of the notice, as has been provided in the proviso to Section 138 of NI Act, the complainant had approached the learned Magistrate by filing the complaint case. On such ground, learned counsel for the Petitioner alleged that a complaint case is premature, hence, the same is not maintainable in the eye of law.

6. Having heard the learned counsels appearing for the parties, on a careful examination of the background facts as well as the materials on record, this Court observes that the Petitioner alleges that the entire proceeding is premature since the complaint case was filed before expiry of the notice period as has been provided in Section 138 of NI Act. In view of the aforesaid position, the present application is being disposed of by granting liberty to the Petitioner to raise such ground during trial. In such eventuality, **learned trial court shall specifically consider the aforesaid aspect and such ground raised by the Petitioner, specifically with reference to the judgment relied upon by the Petitioner.**"

(Emphasized)

7. And, in terms of the liberty granted by this Court, the accused-Petitioner filed a petition "to drop the proceeding on the ground of maintainability" and the operative part of the order dated 02.12.2025 of this Court in CRLMC No.5041 of 2025, adverted to



hereinabove, was also reflected therein along with the decisions referred to by this Court in paragraph-5 noted above.

8. In terms of the direction passed by this Court, the Court in seisin was bound to take up the question of maintainability before proceeding further with the case, but on a queer understanding of the order passed by this Court, the Trial Court chose to reject the petition on the ground of maintainability, which, is assailed herein.

9. The edifice of the judiciary rests upon a hierarchical system. There is no embargo or fetter on subordinate Courts to exercise their jurisdiction independently in accordance with law. Indeed, such independence constitutes the very foundation of the adjudicatory process. However, at the same time, subordinate Courts cannot disregard or act in defiance of a direction issued by a superior Court concerning the manner in which an application is to be considered, however unpalatable such direction may



appear to the subordinate Court. In the case at hand, despite the unequivocal direction of this Court to consider the question of maintainability, the Court below has returned a finding that the petition itself is not maintainable. Such an approach runs contrary to the settled principles of judicial discipline. If permitted to stand, it would undermine public confidence in the administration of justice and erode faith in the justice delivery system.

9-A. In this context, respectful reference can be made to the judgement of the Apex Court in the case of ***Tirupati Balaji Developers (P) Ltd. v. State of Bihar***³.

The relevant paragraph of the said judgment is extracted hereunder for convenience of reference;

"XXX XXX XXX

9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution

³ *Tirupati Balaji Developers (P) Ltd. v. State of Bihar*, (2004) 5 SCC 1



confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to or to question the propriety of such directions would — it is obvious — be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both.

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(Emphasized)

10. In the considered view of this Court, it was not open for the Court in seisin to reject the application of



the Petitioner-accused raising the ground of maintainability in the light of the order passed by this Court.

The same amounts to patent breach of judicial discipline. And, the observation that the accused-Petitioner did not raise the objection earlier and that the defence can be raised at the time of examination of the accused only goes to establish conclusively that the Trial Court has signally failed to understand the import of the order passed by this Court in CRLMC No.5041 of 2025.

This Court is constrained to hold that such approach on the part of the Court in seisin amounts to judicial "harakiri" and can never be countenanced.

11. Hence, the impugned order dated 12.01.2026 is set aside.

The Trial Court is directed to first hear the question of maintainability in the light of the order passed by this Court on 02.12.2025, record a finding



regarding the same and thereafter, shall proceed further with the case at hand.

12. To cut short delay, both sides are directed to appear before the Trial Court on 10.08.2026 and the Court in seisin shall make an endeavour to pass an order on the question of maintainability, as directed above, by the end of August, 2026.

13. Accordingly, the CRLREV is allowed in terms of the direction as noted herein above.

(V. NARASINGH)
Judge

*Orissa High Court, Cuttack,
Dated the 30th July, 2026/Santoshi
31.07.2026/Uploaded*